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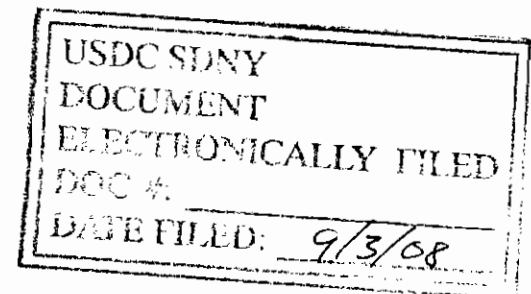
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September 2, 2008

## MEMORANDUM ENDORSED

### BY FACSIMILE

The Honorable Shirley Wohl Kram  
United States District Judge  
Southern District of New York  
United States Courthouse  
40 Centre Street, Room 2101  
New York, NY 10007



***SEC v. Kelly et al.*, No. 1:08-cv-04612-SWK (S.D.N.Y.)**

Dear Judge Kram:

We, the undersigned counsel, represent Defendants John Michael Kelly, Steven E. Rindner, Joseph A. Ripp and Mark Wovsaniker, in this action filed by the Securities and Exchange Commission ("SEC") on May 19, 2008.

We write to seek permission for each defendant to file a motion to dismiss the Complaint pursuant to Federal Rule of Civil Procedure Rules 9(b) and 12(b)(6). The SEC provided each defendant with a Rule 4 waiver request on June 26, 2008. The Parties have conducted an initial Rule 26 Scheduling Conference and remain in discussions about a proposed discovery order. On August 22, 2008, the parties filed a joint stipulation regarding a briefing schedule for the motions to dismiss. Pending Your Honor's approval of the stipulation, motions to dismiss are currently due Friday, September 5, 2008.

We respectfully submit that no pre-motion conference is required. The defendants intend to argue that the claims for penalties are time-barred pursuant to the five-year statute of limitations in 28 U.S.C. § 2462. In addition, each defendant intends to argue that certain claims in the Complaint fail to meet the particularity requirements for fraud and scienter under Federal Rule of Civil Procedure 9(b) and that the Complaint fails to plead facts sufficient to meet the proper standard for materiality. Defendants believe that a pre-motion conference would not provide for resolution or narrowing of the issues. The SEC takes no position with respect to the pre-motion conference.

Moreover, pending Your Honor's approval of the August 22, 2008 stipulation, the parties have agreed that each Defendant's motion should be limited to 40 pages, and the

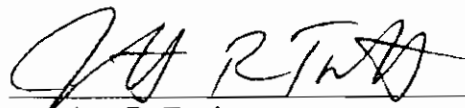
The Honorable Shirley Wohl Kram

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SEC's response should be limited to 100 pages. As the Complaint is lengthy and makes allegations about several transactions that are unique to each defendant, we respectfully request that each defendant be granted an exception to Your Honor's 35-page limitation, and be allowed to submit an additional 5 pages.

Respectfully submitted,



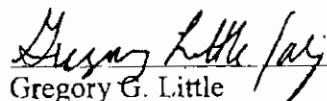
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Cc: Richard Hong, Esq. (vial electronic mail)

Each defendant in this litigation is hereby granted permission to file a 40 page motion to dismiss the Complaint. The Court waives its pre-motion conference requirement with respect to these four motions

SO ORDERED

  
JUDGE SHIRLEY WOHL KRAM  
U.S. D. J.

Dated: September 3, 2008  
New York, NY